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under the circumstances they were treasure trove and belonged to the king by virtue of his royal prerogative." The principal defense was that the articles were not treasure trove, having been voluntarily *abandoned* and not *hidden*, and according to the definition that "treasure trove, is where any gold or silver in coin, plate, or bullion is found concealed in a house or in the earth, or other private place, the owner thereof being unknown," (CHITTY ON PREROGATIVES, p. 152) it was the hiding, and not the abandonment, of the property that entitled the king to it. Defendants asserted that the articles were thrown into the sea as a votive offering to some sea god. The case was decided on the facts. The court in weighing the evidence said: "The defendants' suggestion is that the articles were thrown into the sea, which, they suggest, then covered the spot in question, as a votive offering by some Irish sea king or chief to some Irish sea god at some period between 300 B. C. and 700 A. D.; and for this purpose they ask the court to infer the existence of the sea on the spot in question, the existence of an Irish sea god, the existence of a custom to make votive offerings in Ireland during the period suggested, and the existence of kings or chiefs who would be likely to make such votive offerings. The whole of their evidence on these points . . . is of the vaguest description" and therefore the "natural inference that these articles were a hoard hidden for safety in a land disturbed by frequent raids and forgotten by reason of the death or slavery of the depositor" was preferred and the articles in question were ordered to be delivered to the king as "treasure trove."

The case, despite its academic character, aroused considerable attention, even in parliament, and has called forth pleas in favor of a reform of this doctrine of the law. See 15 JURIDICAL REVIEW, p. 267.

Under the Roman system, the state had no right to *thesaurus*. The finder and the owner of the land upon which articles were found, shared them. SOHM, INSTITUTES (2d ed.), p. 336; GIRARD DROIT ROMAIN, p. 309. In other continental systems, however, the state or some representative of it received either all or a share of the treasure found. GERBER, DEUTSCHES PRIVATRECHT, § 91; POTHIER, TRAITE DU DROIT DE PROPRIETE, Art. IV. § II.

In the United States there seem to be no direct decisions on the question, although this prerogative right was asserted in a late case. *Gardner v. Ninety-nine Gold Coins* (1899), 115 Fed. R. 552. From some cases it might be inferred that the law of treasure trove had been changed, from others that the ancient doctrine still obtained. See 26 AM. & ENG. ENC. OF LAW, p. 538.

THE ERIE CANAL, A NAVIGABLE WATER OF THE UNITED STATES.—In *Perry v. Haines*, 24 Supreme Ct. R. 8., the Supreme Court holds that the admiralty jurisdiction of the United States courts extends over the waters of the Erie Canal. The case arose under the following state of facts: The defendant, the owner of a canal boat, made a contract with the plaintiff, the owner of a drydock in the village of Middleport, located on the Erie Canal, to make certain necessary repairs, which necessitated a partial if not a substantial rebuilding, since the value of the repairs was \$154.40, and the boat after being repaired sold for only \$155.00. The plaintiff was a canal boat builder, and the work was done on his dry docks. "The contract was made on land, to be performed on land, and was in fact performed on land."

The plaintiff instituted proceedings to enforce his lien for the cost of the repairs in the state court, under sections 30 and 35 of the Laws of New York, 1897, Chap. 418. "By the first a lien is given on a sea-going or ocean-bound vessel, if the amount of the debt is \$50.00 or upwards, and on any other vessel if \$15.00 or upwards. And, among other things, the lien is for work done, or material or other articles furnished, for the building or repairing of such vessel. By the second, the lien, if founded upon a maritime contract, can be enforced only in the United States Courts; if not founded upon such contract, by proceedings in the State Courts, in the manner provided by the Code of Civil Procedure." The defendant claimed that the statute giving a lien for such repairs, and providing a remedy for enforcing the same *in rem* is unconstitutional, so far as it concerns the remedy, since it infringes upon the exclusive jurisdiction of the courts of the United States in admiralty and maritime causes. The case was heard in the New York Courts, and is reported in *In re Haines*, 65 N. Y. Supp. 350; *In re Haines*, 68 N. Y. Supp. 1139; *In re Haines*, 168 N. Y. 586, 60 N. E. 1112. The constitutionality of the statute was sustained in all these decisions, and the cause was taken to the Supreme Court of the United States by writ of error. Two questions were presented. *First*: are the waters of the Erie Canal navigable waters over which the admiralty courts have exclusive jurisdiction; and *Second*: was the contract in this case a maritime contract? The second question is of no general interest, and the arguments of the court pro and con on that question will not be noticed at this time. The first question is one of great practical and political importance, involving perhaps, the right and power of the general government to manage and control the navigation of the Erie Canal to the same extent as it may that of the Detroit River or any other navigable natural water way.

The decision of the court was delivered by Justice BROWN, and concurred in by four of his associates. The dissenting opinion was written by Justice BREWER, and concurred in by the Chief Justice and Justices PECKHAM and HARLAN. The court being thus as equally divided, in numbers, as possible.

The majority opinion, after stating the cause of action and the New York statute, says: "The denial of exclusive jurisdiction on the part of the admiralty court to enforce this lien, must rest upon one of two propositions: Either because the cause of action arose upon an artificial canal, or because a canal boat is not a ship or vessel contemplated by the maritime law, and within the jurisdiction of the admiralty courts." A large number of cases are cited sustaining the exclusive jurisdiction of the admiralty courts over all navigable waters, and holding that "Those rivers must be regarded as public navigable rivers in law, which are navigable in fact," and "that they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the states, when they form in their ordinary condition by themselves, or by way of uniting with other waters, a continued highway over which commerce is, or may be, carried on with other states, or foreign countries, in the customary modes in which such commerce is conducted by water." The Court then says: "The only distinction between canals and other navigable waters is that they are rendered navigable by artificial means, and sometimes, though by no means always, are wholly within the limits of a particular state. *We fail to see,*

however, that this creates any distinction in principle." The Court names several canals, St. Clair Ship Canal, St. Mary's Canal, the Welland Canal, the Suez Canal, the Great North Holland Canal, and the Erie Canal, and calls attention to the fact that all of these canals connect navigable waters, and then propounds the question: "Can it be possible that a cause of action which would be maritime, if occurring upon those *connected waters*, would cease to be maritime if arising upon the *connecting waters*?" This position of the majority is assailed by the dissenting justices by this statement: "Take the case of a landlocked lake within the limits of New York. Unquestionably the state has jurisdiction over its waters and the vessels traversing them. The admiralty courts of the United States would not assume any jurisdiction. Can it be that if the state of New York constructs a canal, by which the waters of that lake are connected with the ocean, it is deprived of its full jurisdiction over those waters and the vessels traversing them? Doubtless, to a certain extent, and for the purpose of fully effectuating the admiralty jurisdiction of the nation, the Federal Courts in admiralty would have a certain jurisdiction." Neither the majority nor the minority opinion has very fully or satisfactorily discussed the difficult question involved, which both have fully stated. Both apparently assume that a clear statement of the matter in controversy is amply sufficient.

The Erie Canal is an artificial water-way wholly within the state of New York, and constructed and owned by the state. It connects the navigable waters of Lake Erie with those of the Hudson River in this sense merely, a canal boat loaded at Lake Erie, or on the Hudson, can pass through the length of the canal and reach the other water, but the waters are not connected in the sense that the waters of Lake Erie, or of the Hudson River, pass through the canal. The canal crosses the water shed of the state, and the waters on the west of that shed flow through the canal into Lake Erie, and those on the east through the canal into the Hudson River. Every drop of that water, before it enters the canal, flows from non-navigable rivers and lakes over which the courts of the State of New York have exclusive jurisdiction. The majority fail to explain the legal *hocus pocus* which converts non-navigable waters turned into an artificial ditch, dug by a state, wholly within its own territory, into navigable waters over which the National Government has exclusive admiralty jurisdiction. The majority admit, as we have seen, at the threshold of their argument that a denial of the admiralty jurisdiction of the United States Courts, might rest upon the ground that "the cause of action arose on an artificial canal." One searches the opinion in vain to find any definition of an artificial canal, or in what respect the Erie Canal differs from such a canal. It is placed by the court in the same class with the St. Clair Ship Canal, the St. Mary's Ship Canal and the Welland Ship Canal. There are more points of legal distinction between the Erie Canal and the others named, than there are points of resemblance. The St. Mary's Ship Canal is fed exclusively by the navigable waters of Lake Superior, which pass through it and discharge into the navigable waters of Lake Huron. The navigable waters of Lake St. Clair pass through the St. Clair Ship Canal into the navigable waters of Detroit River. The navigable waters of Lake Erie flow through the Welland Ship Canal and empty into the navigable waters of Lake Ontario. No vessels are

specially constructed for use upon either one of those ship canals, but they are employed to aid navigation upon the Great Lakes which they connect. On the other hand, none of the navigable waters of Lake Erie or the Hudson River flows through the Erie Canal, and not a single maritime craft, built to operate either on Lake Erie or the Hudson River ever passes through the Erie Canal for the transportation of goods or merchandise. The vessels that are employed are constructed with special reference to their exclusive use upon that canal. It is true that canal boats are sometimes towed from the terminus of the canal at Albany, to New York, or from New York to Albany, but it is difficult to understand how such a temporary employment of a canal boat upon the Hudson River can affect the legal character of all the other canal boats in the Erie Canal. Large quantities of pine saw logs are each year towed from Canada, across Lake Huron to various points in Michigan. The contract for such towage is a maritime contract, but whoever imagined that it had the remotest tendency to place each log in the same maritime class with ocean freighters, or to convert the raft into a commercial fleet?

What is an artificial canal? It is to be regretted that neither the majority nor the minority of the Court have discussed that interesting question. What is to follow? If the Erie Canal is one of the navigable waters of the United States over which the admiralty courts have exclusive jurisdiction, may the general government make appropriations for its enlargement and improvement, and direct and control the expenditure of such appropriations, without the consent of the State of New York? Or, is the canal, though its waters are navigable waters of the United States, still for all purposes except admiralty jurisdiction, under the sole and exclusive control of that state? May the state then close the canal, and thus deny to the citizens of the several states, the use of one of the navigable waters of the United States? Other puzzling questions of a like character will suggest themselves to the reader.

PARTNERSHIP NAME—AN ASSET OF THE PARTNERSHIP—RIGHT OF THE PURCHASER TO ITS USE.—The case of *Slater v. Slater*, 175 N. Y. 143, 67 N. E. Rep. 224, 61 L. R. A. 796, is of considerable interest and importance in the field of the suggested subject. The briefs of counsel, particularly as given in connection with the report of the case in 61 L. R. A., will probably be of quite as much use to the profession as the opinion of the court. They indicate extended research, and give classified results of great practical value. It seems that two brothers were for more than forty years engaged in the manufacture and sale of boots and shoes under the firm name of J. & J. Slater, each partner sharing profits and losses equally. The elder brother died in 1901, after which the younger continued the business as surviving partner, under the same firm name and in the same manner in which it had been conducted before the death of his brother, "with a view of closing out the business as a going concern." Such was the situation when this case for an accounting and distribution of the assets of the partnership was begun. The partnership property consisted of bills receivable, stock, fixtures and leases of the premises where the business had been conducted. The trial court decreed the sale at auction of all the firm property as one parcel, but decided that the right to continue the use of the firm name was neither a firm asset nor a part of the